

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
BECKLEY DIVISION**

**SUSAN DODD
(a.k.a., MARY SUSAN DODD)**

Plaintiff,

v.

**Civil Action No. 5:18-cv-00009
(Removed from the Circuit Court of
Greenbrier County, West Virginia, Civil
Action No. 17-C-212)**

**GREENBRIER VMC, LLC
a West Virginia Limited Liability Company,**

Defendant.

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, Defendant, Greenbrier VMC, LLC (incorrectly captioned as “a West Virginia Limited Liability Company”) (“GVMC”), by and through its undersigned counsel, hereby removes the above-captioned civil action from the Circuit Court of Greenbrier County, West Virginia in which it is now pending, to the United States District Court for the Southern District of West Virginia, Beckley Division. Pursuant to 28 U.S.C. §1446(a), copies of all process, pleadings and orders served upon or received by GVMC are attached as **Exhibit A**. Pursuant to L.R. Civ. P. 3.4(b), a copy of the Greenbrier County Circuit Court’s docket sheet, as of January 3, 2018, is attached as **Exhibit B**.

As grounds for removal, GVMC states:

INTRODUCTION

1. On December 13, 2017, Plaintiff, Susan Dodd, a.k.a. Mary Susan Dodd (“Dodd”), commenced this action in the Circuit Court of Greenbrier County, West Virginia by filing a

Complaint naming GVMC as the sole defendant. Dodd's Complaint was assigned Civil Action No. 17-C-212.

2. On December 15, 2017, service of the Summons and Complaint was attempted upon GVMC by Plaintiff by sending a copy of the Complaint and an unexecuted copy of the Summons to GVMC's registered agent in West Virginia. *See Exhibit A*, 1.

3. This Notice of Removal is filed pursuant to 28 U.S.C. §§ 1441 and 1446 on behalf of GVMC. This Court has original jurisdiction over this matter pursuant to 28 U.S.C. § 1332 because the parties are of diverse citizenship and the claims at issue exceed the sum or value of Seventy-Five Thousand Dollars (\$75,000.00), exclusive of interest and costs.

THE COMPLAINT

4. The Complaint alleges that GVMC wrongfully terminated Plaintiff by failing to follow the company "Employee Handbook." Compl. ¶¶ 6-21. The Complaint further appears to assert a cause of action for intentional infliction of emotional distress. Compl. ¶¶ 22-29.

5. As relief, Plaintiff seeks compensatory, punitive, and other damages. Compl., 6.

GROUND FOR REMOVAL – DIVERSITY JURISDICTION

6. This Court has original jurisdiction over this civil action pursuant to 28 U.S.C. § 1332 because the parties are of diverse citizenship and the claims at issue exceed the sum or value of Seventy-Five Thousand Dollars (\$75,000.00), exclusive of interest and costs.

7. According to the Complaint, Plaintiff is a resident of Greenbrier County, West Virginia. Compl. ¶ 1.

8. Greenbrier VMC, LLC is a Delaware limited liability company whose principal place of business is in Franklin, Tennessee.¹

¹ As noted above, Plaintiff's Complaint incorrectly describes Greenbrier VMC, LLC as a "West Virginia Limited Liability Company." Information concerning GVMC's charter state and principal office address is publicly

9. Based on Plaintiff's allegations and the damages sought, it is clear that the amount in controversy exceeds \$75,000.00, exclusive of interest and costs, as required by 28 U.S.C. § 1332. Courts apply a "totality of the circumstances" test to determine whether the amount-in-controversy requirement of 28 U.S.C. § 1332 is met. *See, e.g., Patton v. Wal-Mart Stores, Inc.*, No. 5:05-0655, 2005 U.S. Dist. LEXIS 41010, at *7 (S.D.W. Va. Sept. 26, 2005).

10. Because GVMC and Plaintiff are citizens and residents of different states, with GVMC not being a citizen of the State of West Virginia in which this action was brought, and because the amount in controversy requirement is satisfied, removal of this civil action pursuant to 28 U.S.C. §1441(a) is appropriate based on diversity of citizenship under 28 U.S.C. §1332.

TIMELINESS OF REMOVAL

11. The record indicates that GVMC's registered agent in West Virginia received a copy of the Complaint on December 15, 2017.² *See Exhibit A*, 1. Accordingly, this Notice of Removal is timely being filed within thirty (30) days of receipt of the Complaint by GVMC, pursuant to the requirements set forth in 28 U.S.C. § 1446(b)(1).

NOTICE TO ADVERSE PARTY AND STATE COURT

12. In accordance with 28 U.S.C. § 1446(d), GVMC has contemporaneously filed a copy of this Notice of Removal (without exhibits) with the clerk of the Greenbrier County Circuit Court. A copy of the written Notice of Filing Notice of Removal is attached as **Exhibit C**. GVMC has provided written notice to Plaintiff by contemporaneously serving a copy of this Notice of Removal and **Exhibit C** upon Plaintiff's counsel.

available through the West Virginia Secretary of State's website, accessible at the following address:
<http://apps.sos.wv.gov/business/corporations/organization.aspx?org=194124>.

² GVMC asserts that this method of service was insufficient to confer personal jurisdiction over GVMC by the Circuit Court of Greenbrier County, West Virginia, and preserves its right to assert all defenses permitted by the *Federal Rules of Civil Procedure*.

CONCLUSION

13. By virtue of this Notice of Removal and the Notice filed in Circuit Court, GVMC does not waive its right to assert any personal jurisdictional defense or other responsive pleading, including Rule 12 motions and/or motions to compel arbitration as may be permitted by the *Federal Rules of Civil Procedure*.

WHEREFORE, notice is given that this action is removed from the Circuit Court of Greenbrier County, West Virginia to the United States District Court for the Southern District of West Virginia, Beckley Division.

GREENBRIER VMC, LLC,

By Counsel,

/s/ Raymond L. Harrell, Jr.
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CERTIFICATE OF SERVICE

I, Raymond L. Harrell, Jr., counsel for Defendant, Greenbrier VMC, LLC, do hereby certify that on January 3, 2018, I electronically filed the foregoing **Notice of Removal** with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following CM/ECF participants:

Barry L. Bruce, Esq.
Barry L. Bruce & Associates, L.C.
P.O. Box 388
Lewisburg, WV 24901

/s/ Raymond L. Harrell, Jr.
Raymond L. Harrell, Jr. (W. Va. Bar No. 12995)